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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,681	02/25/2004	Shanta Modak	A34446-A-PCT-USA-AA	3011
21003 7590 05/21/2007 BAKER BOTTS L.L.P. 30 ROCKEFELLER PLAZA 44TH FLOOR NEW YORK, NY 10112-4498			EXAMINER SAMALA, JAGADISHWAR RAO	
			ART UNIT 1618	PAPER NUMBER
			MAIL DATE 05/21/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/786,681	<b>Applicant(s)</b> MODAK ET AL.	
	<b>Examiner</b> Jagadishwar R. Samala	<b>Art Unit</b> 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>02/20/2007</u> . | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

**Acknowledgement of Papers Received:** Information Disclosure Statement filed on 02/20/2007.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Modak et al (US 5,965,610) or Jampani et al. (US 5,980,925) in view of Beilfuss et al (US 5,516,510).

Modak discloses a composition comprising an irritant-inactivating agent such as anti-microbial agent and an anti-binding substance, which substantially prevents the irritant-inactivating agent from binding to the surface (e.g. soluble zinc compounds). And also discloses various anti-microbial agents such as iodine, benzalkonium chloride, phenoxyethanol, triclosan, chlorhexidine digluconate (see column 5, lines 2-25). Further discloses pharmaceutically acceptable cationic substance used to block binding sites on the skin such as zinc acetate, zinc gluconate, zinc oxide, zinc stearate, and zinc salicylate (see column 7, lines 10-12) and when the irritant-inactivating agent is an anti-microbial agent, and when the anti-binding substance is zinc, the ratio of the amount of the anti-microbial agent to the amount of the anti-binding substance is preferably from about 1:13 to about 2:1 (see column 9, lines 2-6). Further cationic substance include quaternary ammonium compounds such as amino acids and peptides, quaternized proteins such as cocodimonium hydroxypropyl hydrolyzed keratin (see column 7, lines 14-23).

Jampani discloses a composition comprising anti-microbial agent and a dermal anchoring/skin agent such as glycerin (see abstract). And also discloses various anti-microbial agents, chlorhexidine or its derivatives such as chlorhexidine digluconate,

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benzalkonium chloride, parachlorometaxlenol, iodine, triclosan, quaternary ammonium compounds (e.g. cationic peptides, organometallic antiseptics, alkyl pyridinium salts) and metal cationic substance is zinc oxide (see column 3, lines 2-12).

Modak and Jampani fails to disclose octoxyglycerin in a composition. However, the incorporation of octoxyglycerine to enhance the activity of active ingredients, such as anti-microbial agents is well known in the art as shown by Beilfuss.

Beilfuss discloses a composition comprising anti-microbial agent and glycerine monoalkyl ethers such as octoxyglycerin. The preferred anti-microbial agents include phenoxy ethanol, chlorihexidine salts, as well as salts of other cation-active compounds with deodorizing action. The glycerin monoalkyl ethers incorporated are mild and skin-compatible, have a good spreading capacity and confer a pleasant skin feeling, they are particularly suitable for deo-compositions. The glycerin monoalkyl ether, particularly 2-ethyl hexyl glycerin ether displays good antimicrobial effect, inhibits enzymes or catalysts which are responsible for the odor formation from the primarily odorless sweat, have an effect on the sweat-gland secretion, whereby sweat secretion is reduced.

In view of above teachings, it would have been obvious to one of ordinary skill in the art to modify the anti-microbial composition disclosed by Modak and Jampani because Beilfuss teaches that composition comprising octoxyglycerin enhances the activity of anti-microbial agents and have good penetration capacity into the skin and/or the ability to penetrate deeper into the upper layers of the epidermis may also possibly be decisive. Further composition comprising octoxyglycerin have excellent stability,

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compatibility with other active ingredients and auxiliaries support for the dispersing and co-emulsifying action in cosmetic preparations.

One of ordinary skill in the art at the time the invention was made would have been motivated to incorporate octoxyglycerin into anti-microbial composition, because such glycerin monoalkyl ethers in cosmetic preparations would provide a reasonable expectation of success in producing the advantageous properties as stated above and the claimed invention.

### ***Conclusion***

1. No claims are allowed at this time.
2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jagadishwar R. Samala whose telephone number is (571)272-9927. The examiner can normally be reached on 8.30 A.M to 5.00 P.M.

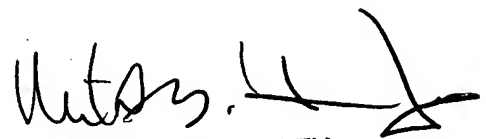
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Hartley can be reached on (571)272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jagadishwar R Samala  
Examiner  
Art Unit 1618

sjr



MICHAEL G. HARTLEY  
SUPERVISORY PATENT EXAMINER